IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

COMVERGE, INC., Plaintiff, v. ENTEK SYSTEMS, LLC, and ENTEK SYSTEMS, INC. Defendants.	)	CIVIL ACTION NO. 2:13-cv-00026-RWS

AMENDED JOINT CLAIM CONSTRUCTION AND PRE-HEARING STATEMENT

Pursuant to LPR 6.3, the Court's Scheduling Order (D.E. 13), and the Court's December 3, 2013 Order (D.E. 55), Plaintiff Comverge, Inc. ("Comverge") and Defendants EnTek Systems, LLC and EnTek Systems, Inc. (collectively, "EnTek") hereby submit this Amended Joint Claim Construction and Prehearing Statement.

I. The Agreed-Upon Construction of Claim Terms, Phrases, or Clauses.

Pursuant to Patent L.R. 6.3(b)(1), the parties state that they have reached agreement on the claim construction for the following terms:

U.S. Patent No. 5,345,225	
"predetermined period of time" (cls. 1, 6-7, 13, 18-19, 24, 29-31)	"a length of time that was established beforehand"

U.S. Patent No. 5,345,225	
"relay circuit" (cls. 3, 15, 26)	"a circuit that alternately supplies and terminates current to the load"

U.S. Patent No. 7,606,639	
"detection module" (cl. 13)	"a component that detects when the control wire is active (e.g., 'calling' for energy)"
"[appliance] actuation sensor" (cl. 1)	"a sensor configured to detect when the appliance is operational"
"predetermined minimum allowed run time" (cl. 10)	"a minimum period of time, established in advance, for which a connected appliance is permitted to be operational"

II. The Parties' Proposed Constructions of Disputed Claim Terms.

Pursuant to Patent L.R. 6.3(b)(2) and the Court's December 3, 2013 Order (D.E. 55), the parties propose the following constructions of each disputed claim term, phrase, or clause. The parties jointly propose elevent (11) terms from the '225 Patent, five (5) terms from the '639 Patent, and fourteen (14) terms from the '700 Patent.

Attached as Exhibit A to this statement is Comverge's identification of intrinsic and extrinsic evidence supporting its proposed constructions, and attached as Exhibit B to this statement is EnTek's identification of intrinsic and extrinsic evidence supporting its proposed constructions.

U.S. Patent No. 5,345,225		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"warning signal" (cls. 1, 9, 13, 20, 24, 32)	"a signal generated when the monitoring means detects that no current has been supplied to the load during a certain period of time."	"signal generated when load is not connected for a predetermined period of time and directed to a data storage device where it sets a memory location to a predetermined state."
"predetermined memory location" (cls. 9-11, 20-23, 32-34)	This term needs no construction and should be given its plain and ordinary meaning.	"a pre-identified location in an internal memory of a microprocessor, external memory, or data storage device that is set by the microprocessor to indicate the existence of a 'no current' condition."
"predetermined state" (cls. 9-10, 20-21, 32-33)	This term needs no construction and should be given its plain and ordinary meaning.	"a state determined beforehand to which a memory location in a data storage device is set by a warning signal to indicate disconnection of the load from the load control switching and monitoring apparatus."

U.S. Patent No. 5,345,225		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"signal generator" (cls. 24, 32)	This term needs no construction and should be given its plain and ordinary meaning.	"a microprocessor having a counter therein that sets a tamper flag in its internal memory and a tamper flag in an external memory or data storage device connected to the microprocessor when the counter reaches a predetermined count."
Means + Function Terms		
"monitoring means" (cls. 1-3, 6-7)	Function(s): "detecting whether a current is passing to a load by way of the load control device" "continuously detecting whether a current is passing to a load by way of the load control device" Structure: "Coupling monitor 66 or relay coil monitor 70"	"a monitor circuit having a coupling current monitor that automatically measures whether current is flowing in a sensing conductor of a coupling loop of magnetic material or a relay coil monitor that automatically measures whether current is flowing in a coil of a load control relay."

U.S. Patent No. 5,345,225		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"signal means" (cls. 1, 9)	Function: "generating a warning signal when no current is detected by the monitoring means for a first predetermined period of time" Structure: "LED 79"	"a microprocessor having a counter therein that sets a tamper flag in its internal memory and a tamper flag in an external memory or data storage device connected to the microprocessor when the counter reaches a predetermined count."
"means for sensing a field" (cl. 3)	Function: "sensing a filed induced in the relay circuit when current is passing to the load from the load control device" Structure: "relay coil monitor 70"	"a coupling current monitor that automatically measures whether current is flowing in a sensing conductor of a coupling loop of magnetic material or a relay coil monitor that automatically measures whether current is flowing in a coil of a load control relay."
"reset means" (cls. 6-7)	Function: "restarting the predetermined period of time upon detecting of a current by the monitoring means" "restarting the first predetermined period of time upon detecting of a current by the monitoring means continuously for a second predetermined period of time"	"microprocessor that resets an internal counter therein when a coupling current monitor detects the presence of a current for a minimum time."

U.S. Patent No. 5,345,225		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
	Structure: "microprocessor 75"	
"means . . . for activating a visual indicator" (cl. 10)	Function: "activating a visual indicator" Structure: "microprocessor 75"	"a microprocessor that causes a test LED located on the panel of the load control device to flash."
"data collection means" (cls. 11-12)	Function: "reading the state of the predetermined memory location" Structure: "optical reader 80" and "optical interface 82"	"a remotely located data processing center and a communicating unit of the load control switching and monitoring apparatus operative to transmit to the data processing center, data stored at a pre-identified location in an internal memory of a microprocessor, external memory, or data storage device that is used to indicate the existence of a 'no current' condition."
"means for altering said first period of time" (cl. 8)	Function: "altering the first period of time" Structure: "command center 35"	"a command center that sends a command to the load control device including a substituted first time period."

U.S. Patent No. 7,606,639		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"fractional run time" (cls. 1, 13)	"fraction of time during a particular time period that the appliance is calling for energy"	"a fraction of time during a predetermined period of time for which the connected appliance is running."
"connected load value" (cls. 1, 13, 16)	"quantity of an appliance's load upon connection (e.g., quantity, value, or rating in KW)."	"the amount of energy consumed by an appliance connected to the system for reducing energy consumption when such appliance is operating."
"allowed energy consumption value" (cl. 1)	"((Fractional Run Time)*(Connected Load Value)) – Power Reduction Factor."	"an amount of time mathematically computer by a microprocessor of the system for reducing energy consumption that a connected appliance is permitted to run during a selected period of time, such amount being computed as: allowed energy consumption value divided by the connected load value of the connected appliance."

U.S. Patent No. 7,606,639		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"power reduction factor" (cls. 1, 11, 13)	"amount of energy to be reduced during a given time period."	"a number of watts of energy consumption by a connected appliance, received by the system for reducing energy consumption from a remote source, that is to be curtailed during a time interval."
"calculating an allowed run time responsive to the allowed energy consumption" (cl. 1)	This term needs no construction and should be given its plain and ordinary meaning.	"computing with a microprocessor of the system for reducing energy consumption, the amount of time that a connected appliance is permitted to run during a selected period of time based on the amount of energy that the connected appliance is allowed to consume during the same selected period of time."

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"electrical load data" (cls. 1-2, 9-10, 16)	"such information that comes from detecting the distribution and interruption of energy to an electrical load."	"data generated in response to the distribution or interruption of energy to the electrical load, where

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
		the data includes time and date data."
"electrical load control data packets" (cls. 2-4, 7-8, 16, 38, 55-57)	"units of information regarding the functioning of the control unit."	"data packets stored by the recorder regarding electrical load control data during predetermined time intervals which include timing data in the form of a date and time stamp indicating the relative time for the start of each of the predetermined time intervals."
"data processing center" (cls. 1-2, 7-10, 16, 38, 55-57)	This term needs no construction and should be given its plain and ordinary meaning.	"a host computer system remotely located from the electrical load which processes electrical load data and electrical load control data using time and date data therein to determine the effectiveness of the electrical load management system."
"electrical load control data" (cls. 1-2, 9-10, 55)	"information as to the functioning of the control unit, i.e., receipt of the control signal by the electrical load."	"data generated in response to the control operations of the control means to either remove the electrical load from the electrical distribution network or to insert the electrical load into the

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
		network, where the data includes time and date data."
"effectiveness of said electrical load management system" (cls. 1, 8, 16, 55)	This term needs no construction and should be given its plain and ordinary meaning.	"a determination of the actual energy usage reduction achieved during a particular time interval by comparing profiles of the length of time that energy is supplied to loads during the predetermined time interval developed by combining 'LOAD ON' time intervals to profiles of the length of time that the loads were removed from the network during the predetermined time interval developed by combining 'CONTROL OPERATION ON' time intervals."
"timing data" (cls. 4, 6)	This term needs no construction and should be given its plain and ordinary meaning.	"a date and time stamp present in each of the stored electrical load data packets and each of the stored electrical load control data packets indicating the relative time for the start of each of the predetermined time intervals."

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
Means + Function Terms		
"control means" (cls. 1, 3, 16-17)	Function: "controlling the electrical load" Structure: "control unit 32"	"a control unit having (1) a load control receiver that receives coded command signals, including addressing data and command data, from a remote control center, and (2) a control relay circuit that (a) interrupts electrical energy supplied to a load in response to a first command signal and (b) restores electrical energy to the load by inserting the load into an electrical network in response to another command signal."
"first monitoring means" (cls. 1, 16)	Function: "generating electrical load data" Structure: "first monitor 36"	"a first monitor connected between the load and control unit, and having a current sensor circuit and a first signal generator that generates electrical load data (including date and time data) in response to detecting the distribution and interruption of energy supplied to the electrical load."

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
"second monitoring means" (cls. 1, 16)	Function: "generating electrical load control data" Structure: "second monitor 38"	"a second monitor connected between the control unit and a data collection system, having a relay position sensor circuit and a second signal generator, and generating electrical load control data (including date and time data) representing the operating state of the control unit in response to detecting operation of the control unit to remove or insert the load from/into electrical distribution network."
"data collection means" (cls. 1-2, 9-11)	Function(s): "collecting the electrical load data and the electrical load control data" "transmitting the electrical load data and the electrical load control data to a data processing center" Structure: "data collection system 33"	"a data collection system, including a data recorder having first data storage for storing signals from the first signal generator to produce stored electrical load data packets and a second data storage for storing signals from the second signal generator to produce stored electrical load control data, and a communicating unit for receiving the stored electrical load data

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
		packets and electrical load control data packets from the recorder and transmitting the stored electrical load data packets and electrical load control data packets to the data processing center for processing to determine the effectiveness of the electrical load management system, where the electrical load data packets and electrical load control data packets each include date and time data."
"recording means" (cls. 2, 16)	Function: "recording the electrical load control data and the electrical load data during a plurality of predetermined time intervals" Structure: "recorder 90"	"a data recorder having first data storage for storing signals during multiple predetermined time intervals to produce stored electrical load data packets and a second data storage for storing signals during multiple predetermined time intervals to produce stored electrical load control data packets, where the electrical load data packets include time and date data and the

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
		electrical load control data packets include time and date data."
"communicating means" (cls. 2, 7, 16, 38)	Function: "transmitting the electrical load control data packets and the electrical load data packets to the data processing center" Structure: "communicating unit 96"	"a communicating unit for transmitting stored electrical load data packets and electrical load control data packets to the data processing center, where the electrical load data packets include time and date data and the electrical load control data packets include time and date data."
"means for transmitting" (cls. 2, 16, 38)	Function: "transmitting coded command signals" Structure: "command center 26"	"command center which initiates an electrical load control operation by transmitting coded command signals having addressing data and command data via a transmitting antenna to the load control switching and monitoring apparatus."
"switching means" (cls. 17, 38)	Function(s): "removing the electrical load from the electrical distribution network" "inserting the electrical load in the electrical distribution	"the control relay circuit of a control unit of a load control switching and monitoring apparatus which operates to remove an electrical load in response to a selected

U.S. Patent No. 5,576,700		
Terms or Phrases for Construction Proposed Jointly	**Comverge's Proposed Construction**	**EnTek's Proposed Construction**
	network" Structure: "control relay circuit 62"	decoded command signal and operates to restore the electrical load in response to another selected decoded command signal."

III. Anticipated Length of Time for Claim Construction Hearing.

Pursuant to Patent L.R. 6.3(b)(3), the parties anticipate that the Claim Construction hearing will require four hours.

III. Anticipated Witnesses for Claim Construction Hearing.

Pursuant to Patent L.R. 6.3(b)(4), at this time the parties do not plan to call any witnesses or present any expert testimony at the Claim Construction Hearing.

Dated: December 23, 2013

Respectfully Submitted,

/s/ Suzanne Werner A. Shane Nichols 542654 Georgia Bar No. 443978 Holly Hawkins Saporito Georgia Bar No. 142496 C. Suzanne Werner Georgia Bar No. 321398 ALSTON & BIRD LLP 1201 West Peachtree Street Atlanta, Georgia 30309-3424 Tel.: (404) 881-7000 Fax: (404) 881-7777 shane.nichols@alston.com holly.saporito@alston.com suzanne.werner@alston.com **ATTORNEYS FOR PLAINTIFF COMVERGE, INC.**	*/s/ Stephen Dorvee* Stephen M. Dorvee Georgia Bar No. 226989 Arnall Golden Gregory LLP 171 17th Street, NW Suite 2100 Atlanta, Georgia 30363 Telephone: (404) 873-8500 Facsimile: (404) 873-8501 stephen.dorvee@agg.com **ATTORNEYS FOR DEFENDANTS ENTEK SYSTEMS, LLC AND ENTEK SYSTEMS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Georgia, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to individuals who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Suzanne Werner
Suzanne Werner

CERTIFICATE OF CONFERENCE

This is to certify that counsel for Plaintiff, Comverge, Inc. and counsel for Defendants, EnTek Systems, LLC and EnTek Systems, Inc., have met and conferred in connection with this amended joint statement. Counsel for Defendants have agreed to the content and form of this statement and have provided consent to this filing.

/s/ Suzanne Werner
Suzanne Werner